FILE COPY

Office-Supreme Court, U.S.
FILED
AUG 7 1964
JOHN F. DAVIS, CLERK

No. 244

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

CHATSWORTH COOPERATIVE MARKETING ASSOCIATION, ET AL.,
Petitioners,

vs.

INTERSTATE COMMERCE COMMISSION
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY TO RESPONDENT'S MEMORANDUM

NORMAN MILLER
Attorney for Petitioners

MILLER, SCHNEIDER & GALASSO
One East Wacker Drive—#3800
Chicago, Illinois 60601
329-9000

The Scheffer Press, Inc.—ANdover 3-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 244

CHATSWORTH COOPERATIVE MARKETING ASSOCIATION, ET AL.,

Petitioners,

vs.

INTERSTATE COMMERCE COMMISSION

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

---

REPLY TO RESPONDENT'S MEMORANDUM

The Respondent's Memorandum, in opposition to the Petitioners' Petition for Writ of Certiorari is erroneous in its statement of facts and in its statement of law in the following respects:

The issues raised by the Petitioners' Motion to Dismiss were not, and are not that the Statute involved is unconstitutional as a violation of the doctrine of separation of powers because it gives the Commission authority to initiate an injunctive proceeding without the approval of the Attorney General, as stated on Page 2 of the Memorandum of Respondent In Opposition.

The first issue raised by the Petitioners' Motion To Dismiss, was clearly set forth on Page 3 of the Petitioners' Petition of Writ of Certiorari. The enabling Statute violates the doctrine of separation of powers because it vests in the Interstate Commerce Commission the authority to initiate as a party and prosecute in its own right, a case or controversy against a citizen or citizens who have allegedly violated the laws of the United States. It is apparent that such a Statute is an attempt to vest authority in the Respondent to act as the law enforcement agent of the United States. The Petitioners' Motion to Dismiss clearly points out that the vesting of such authority is a violation of the Constitutional doctrine of separation of powers, in that it confers upon an administrative body, judicial functions and endeavors to transfer administrative discretion to a Court of law.

The second issue raised by the Petitioners' Motion to Dismiss, also as clearly set forth on Page 3 of the Petitioners' Petition for Writ of Certiorari, is that the enabling Statute is un-constitutional because it eliminates the role of the Attorney General as the law officer of the United States and his right therein to determine whether or not to prosecute for violations of the laws of the United States. It is the Petitioners' contention that such an elimination of the Attorney General is a denial of due process of law as guaranteed by the Constitution of the United States. The aforesaid contention was clearly set forth in the Petitioners' Motion to Dismiss.

The Respondent's Memorandum In Opposition to the Petitioners' Petition for Writ of Certiorari states "that even if the question raised on a Motion to Dismiss is a Constitutional one, . ." a denial of a Motion to Dismiss is not a final decision and is not an appealable Order.

The Petitioners have not contended that a denial of a Motion To Dismiss, merely because the latter involves a Constitutional question, is a final, appealable order. As specifically set forth on Page 8 of the Petitioners' Petition for Writ of Certiorari, it is the Petitioners' contention that when the procedural properties or aspect of a Statute are Constitutionally challenged by the only means available to so challenge; *i. e.*, a Motion to Dismiss, an Order denying the Motion to Dismiss is a final decision and definitely an appealable Order, for no circumstances, evidence or law at the level wherein the motion to dismiss was denied, can or will have any effect upon the decision to deny the Motion to Dismiss.

Wherefore, your Petitioners respectfully pray that this Honorable Court grant its prayer for a Writ of Certiorari.

Respectfully submitted,

NORMAN MILLER
Attorney for Petitioners

MILLER, SCHNEIDER & GALASSO
One East Wacker Drive—#3800
Chicago, Illinois 60601
329-9000